

APPEAL NO. 170659
FILED MAY 9, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 15, 2017, in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that the (date of injury), compensable injury does not extend to concussion, post-concussion syndrome, traumatic brain injury or depression and that (Dr. P) was not appointed as the designated doctor in accordance with Section 408.0041 and rules of the Texas Department of Insurance, Division of Workers' Compensation (Division).

The appellant (claimant) appealed the hearing officer's determinations as being contrary to the preponderance of the evidence and argued further that the hearing officer erred in failing to appoint a qualified designated doctor to address the extent-of-injury issue following her determination that Dr. P was not qualified pursuant to 28 TEX. ADMIN. CODE § 127.130(b)(8)(A) (Rule 127.130(b)(8)(A)).

The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed in part and reversed and remanded in part.

The claimant, a heavy equipment operator, testified that he sustained an injury on (date of injury), when he fell from a height of approximately six feet and landed on his head. He indicated that he was transported by ambulance to the emergency room where he was diagnosed with syncope, rib fracture, closed head injury and concussion with loss of consciousness. Thereafter, the claimant was seen by (Dr. K) who noted that the claimant had sustained a concussion, that he had been disoriented since the fall and that his wife complained that he was acting differently since the injury. The claimant was referred to neurologist (Dr. E) who noted a history of confusional state with significant deficits in memory/recall and attention. Dr. E expressed the opinion that the claimant suffered a non-work related syncope, causing him to fall and resulting in a mild traumatic brain injury.

The carrier has accepted as compensable fractures of the left lateral 7th and 8th ribs and a facial abrasion. Relying on the reports of its peer reviewer, (Dr. B), the carrier argues that the claimant's symptoms resulting in the claimed conditions of concussion, post-concussion syndrome, traumatic brain injury and depression are unrelated to his fall on (date of injury), but are a result of mild small vessel ischemic

changes in the deep white matter of the brain and moderate demyelination in the central pons, a pre-existing chronic condition identified in post-injury CT and MRI scans of the claimant's brain.

The claimant filed a Request for Designated Doctor Examination (DWC-32) dated September 28, 2016, requesting the appointment of a designated doctor to address extent of the compensable injury to include the disputed conditions. In response the Division appointed Dr. P who referred the claimant to psychologist (Dr. J) for neuropsychological evaluation. Based upon his examination and Dr. J's report, Dr. P determined that the compensable injury resulted in the conditions in dispute.

Section 408.0043 provides, in part, with regard to designated doctors as follows:

(b) A person described by Subsection (a) who reviews a specific workers' compensation case must hold a professional certification in a health care specialty appropriate to the type of health care that the injured worker is receiving.

Rule 127.130(b)(8)(A) provides as follows:

To examine traumatic brain injuries, a designated doctor must be board certified in neurological surgery, neurology, physical medicine and rehabilitation, or psychiatry by the [American Board of Medical Specialties (ABMS)] or board certified in neurological surgery, neurology, physical medicine or rehabilitation, or psychiatry by the [American Osteopathic Association Bureau of Osteopathic Specialists (AOABOS)].

In evidence is a physician profile prepared by the Texas Medical Board which indicates that Dr. P holds ABMS board certifications in emergency and family medicine, but he is not listed as being board certified in any of the specialties enumerated in Rule 127.130(b)(8)(A). Accordingly, we affirm that Dr. P was not appointed as the designated doctor in accordance with Section 408.0041 and Division rules.

Section 408.0041 provides, in part, that an employee may request and the Division may order a medical examination to resolve questions regarding the extent of the employee's compensable injury. We hold that under the facts of this case, the parties should receive the benefit of an impartial examination by a qualified designated doctor as contemplated by Sections 408.0041 and 408.0043 and Rule 127.130(b)(8)(A). Accordingly, we reverse the hearing officer's determination that the compensable injury does not extend to concussion, post-concussion syndrome, traumatic brain injury and depression and we remand the issue of extent of injury for the appointment of another designated doctor.

SUMMARY

We affirm the hearing officer's determination that Dr. P was not appointed as designated doctor in accordance with Section 408.0041 and rules of the Division.

We reverse the hearing officer's determination that the (date of injury), compensable injury does not extend to concussion, post-concussion syndrome, traumatic brain injury or depression and remand the issue of extent of injury to the hearing officer for further action consistent with this decision.

REMAND INSTRUCTIONS

On remand the hearing officer is to cause a designated doctor qualified to examine traumatic brain injuries to be appointed to address the issue of extent of injury.

The hearing officer is to advise the newly appointed designated doctor that the compensable injury includes fractures of the left lateral 7th and 8th ribs and a facial abrasion and shall request that the designated doctor examine the claimant and opine regarding whether the compensable injury of (date of injury), extends to concussion, post-concussion syndrome, traumatic brain injury and depression.

After the designated doctor examines the claimant and submits his report, the parties are to be provided with the Designated Doctor Examination Data Report (DWC-68) and narrative and are to be allowed an opportunity to respond. The hearing officer is then to make findings of fact, conclusions of law and a determination regarding extent of the compensable injury which are supported by the evidence and consistent with this decision.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Division, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Appeals Panel Decision 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3232.**

K. Eugene Kraft
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge